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Attorneys for Defendants
ALAMEDA COUNTY MEDICAL CENTER,
SCOTT ZELLER, M.D., KURT BIEHL, M.D.,
JEANETTE COTANCHE, R.N., LEONI ALFONSO, R.N.,
MADELYNE MARKLE, R.N.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

LISA JOHNSON, by and through her
Conservator, Sharon Toth,

Plaintiff,

vs.

ALAMEDA COUNTY MEDICAL CENTER,
SCOTT ZELLER, M.D., KURT BIEHL,
M.D., JEANETTE COTANCHE, R.N.,
LEONI ALFONSO, R.N., MADELYNE
MARKLE, R.N., CEDRICK FROWNER, et
al.,

Defendants.

Case No.:

**NOTICE OF REMOVAL OF ACTION
PURSUANT TO 28 U.S.C. §1441(b)
(Federal Question - 42 U.S.C. §1983)**

JURY TRIAL DEMANDED

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that defendants ALAMEDA COUNTY MEDICAL CENTER,
SCOTT ZELLER, M.D., KURT BIEHL, M.D., JEANETTE COTANCHE, R.N., LEONI
ALFONSO, R.N., and MADELYNE MARKLE, R.N. hereby remove to this court the state court
action described below:

1. On September 15, 2005, an action was commenced in the Superior Court in and for
the County of Alameda, entitled LISA JOHNSON, by and through her Conservator, Sharon Toth,
versus ALAMEDA COUNTY MEDICAL CENTER and CEDRICK FROWNER, and DOES 1 to

E-filing

ORIGINAL
FILED
JUN 28 2007
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

ADR

007-03395 JCS

1 50, inclusive, case no. RG05232747. A copy of the Summons and Complaint for Damages filed in
2 the case is attached hereto as **Exhibit A**. This complaint stated only claims based upon California
3 state law and did involve diversity of citizenship between the plaintiff and defendants and was
4 therefore not removable at the time that it was filed.

5 2. On November 1, 2005, plaintiff filed a First Amended Complaint for Damages
6 entitled LISA JOHNSON, by and through her Conservator, Sharon Toth, versus ALAMEDA
7 COUNTY MEDICAL CENTER, SCOTT ZELLER, M.D., KURT BIEHL, M.D., JEANETTE
8 COTANCHE, R.N., LEONI ALFONSO, R.N., MADELYNE MARKLE, R.N., and CEDRICK
9 FROWNER, and DOES 1 to 50, inclusive. A copy of the Summons and First Amended Complaint
10 for Damages is attached hereto as **Exhibit B**. This complaint stated only claims based upon
11 California state law and did involve diversity of citizenship between the plaintiff and defendants
12 and was therefore not removable at the time that it was filed.

13 3. On November 30, 2005, defendant ALAMEDA COUNTY MEDICAL CENTER
14 filed an Answer to the First Amended Complaint. A copy of this Answer is attached hereto as
15 **Exhibit C**.

16 4. On January 27, 2006, defendants SCOTT ZELLER, M.D., KURT BIEHL, M.D.,
17 JEANETTE COTANCHE, R.N., LEONI ALFONSO, R.N., MADELYNE MARKLE, R.N. filed
18 an Answer to the First Amended Complaint. A copy of this Answer is attached hereto as **Exhibit**
19 **D**.

20 5. On February 16, 2006, plaintiff filed a proof of service of the summons and
21 amended complaint on defendant CEDRICK FROWNER. A copy of said proof of service is
22 attached hereto as **Exhibit E**. Defendant FROWNER has not filed an answer to the First
23 Amended Complaint, or otherwise appeared in this action.

24 6. On November 8, 2006, the Superior Court in and for the County of Alameda issued
25 an order relieving attorney Charles Schwartz as attorney of record for plaintiff LISA JOHNSON.
26 A copy of said order is attached hereto as **Exhibit F**.

27 7. On November 29, 2006, a Substitution of Attorney was filed by plaintiff LISA
28

1 JOHNSON, substituting attorney Douglas Fladseth as plaintiff's attorney of record. A copy of
2 said Substitution is attached hereto as **Exhibit G**.

3 8. On November 29, 2006, attorney Charles Schwartz filed a Notice of Attorney's
4 Lien for Fees and Costs. A copy of said Notice is attached hereto as **Exhibit H**.

5 9. On May 23, 2007, plaintiff filed a Motion For Leave To File An Amended
6 Complaint. A copy of said motion is attached hereto as **Exhibit I**.

7 10. On June 21, 2007, the court granted plaintiff's Motion For Leave To File An
8 Amended Complaint. A copy of said order is attached hereto as **Exhibit J**.

9 11. On June 26, 2007 plaintiff's Second Amended Complaint was filed. A copy of said
10 complaint is attached hereto as **Exhibit K**. Said complaint included a "seventh cause of action"
11 which was not contained in the original or first amended complaints, and which alleged a claim for
12 violation of plaintiff's federal civil rights pursuant to 42 U.S.C. section 1983 against only
13 defendant ALAMEDA COUNTY MEDICAL CENTER.

14 12. On June 28, 2007, defendants ALAMEDA COUNTY MEDICAL CENTER,
15 SCOTT ZELLER, M.D., KURT BIEHL, M.D., JEANETTE COTANCHE, R.N., LEONI
16 ALFONSO, R.N., and MADELYNE MARKLE, R.N. filed an answer to the Second Amended
17 Complaint. A copy of said answer is attached hereto as **Exhibit L**.

18 13. Other than filing an answer to the second amended complaint in the state court
19 action, defendants have taken no other action in response to plaintiff's claim for violation of her
20 federal civil rights in said action.

21 14. This action is a civil action of which this Court has original jurisdiction under 28
22 U.S.C. § 1331, and it is one that may be removed to this Court by defendants pursuant to the
23 provisions of 28 U.S.C. § 1441(b) in that it arises under 42 U.S.C. § 1983 (Civil Rights Act). The
24 court has jurisdiction over plaintiff's state law claims pursuant to 28 USC § 1367(a).

25 15. All defendants join in this notice of removal except for defendant CEDRICK
26 FROWNER. Counsel for defendants is informed and believes that defendant FROWNER has not
27 been served with the Second Amended Complaint. Plaintiff's cause of action pursuant to 42 USC
28

§ 1983 is not directed against defendant FROWNER, and the only claims asserted against defendant FROWNER arise out of state law and do not involve federal questions.

DATED: June 28, 2007.

BOORNAZIAN, JENSEN & GARTHE

By: 

JILL P. SAZAMA, ESQ.
Attorneys for Defendants
ALAMEDA COUNTY MEDICAL
CENTER, ZELLER, BIEHL,
COTANCHE, ALFONSO and
MARKLE

DEMAND FOR JURY TRIAL

Defendants ALAMEDA COUNTY MEDICAL CENTER, ZELLER, BIEHL, COTANCHE, ALFONSO and MARKLE hereby demand a trial by jury for any and all claims for which a trial by jury may be had.

DATED: June 28, 2007.

BOORNAZIAN, JENSEN & GARTHE

By: 

JILL P. SAZAMA, ESQ.
Attorneys for Defendants
ALAMEDA COUNTY MEDICAL
CENTER, ZELLER, BIEHL,
COTANCHE, ALFONSO and
MARKLE

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